IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 22944 of 2007(F)

AGAINST THE ORDER IN EP 33/2006 IN
OS.227/2004 of SUBORDINATE JUDGE, THALASSERY
.....

PETITIONERS:
----

1. K.V.JOSEPH, S/O.VARGHESE,
KEECHAPPILLIL HOUSE, KELAKKAD P.O.,
KANICHAR AMSOM THALASSERY TALUK, KANNUR DISTRICT.

2. LEELAMMA JOSEPH, W/O.K.V.JOSEPH,
RESIDING -DO-.

BY ADV. SRI.CIBI THOMAS

RESPONDENT:

THE FEDERAL BANK LTD., HEAD OFFICE,
ALWAYE, BY ITS KELAKAM BRANCH,
REPRESENTED BY BRANCH MANAGER.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

==========

W.P.(C) No.22944 OF 2007

==========

Dated this the 26th day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P4. The bank has obtained a decree against the respondents therein for realisation of more than Rs. 9 lakhs. The court had fixed the sale for 1.8.2007 fixing the upset price at Rs.5 lakhs for the land, Rs.3 lakhs for the house and Rs. 1 ½ lakhs for item No.2. It is seen from the file that the respondents have filed an objection contending for the position that the property will fetch Rs.30 lakhs and only a portion of the property, if sold, will be sufficient to discharge the decree debt. I feel that is not seen considered by the court below. Further, under the proviso to Order XXI Rule 66 of the Code of Civil Procedure, the court is not bound to fix the upset price, but it can show the price suggested by the decree holder as well as by the judgment debtors. But, I find from Ext.P4 draft proclamation that the value shown by the judgment debtors is not incorporated. The court has also not considered whether the sale of one of the items of the property will be sufficient to discharge the decree debt.

Therefore I direct the court below to defer the sale posted for

1.8.2007 and consider the question whether a portion of the property, if sold, will be sufficient to discharge the decree debt and also show the upset price shown by the judgment debtors and the judgment debtors are directed to show their estimation of the value of each item of the property separately. After consideration, the sale can be done in accordance with law and in the meanwhile petitioners also can try for a settlement of the case with the bank.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-